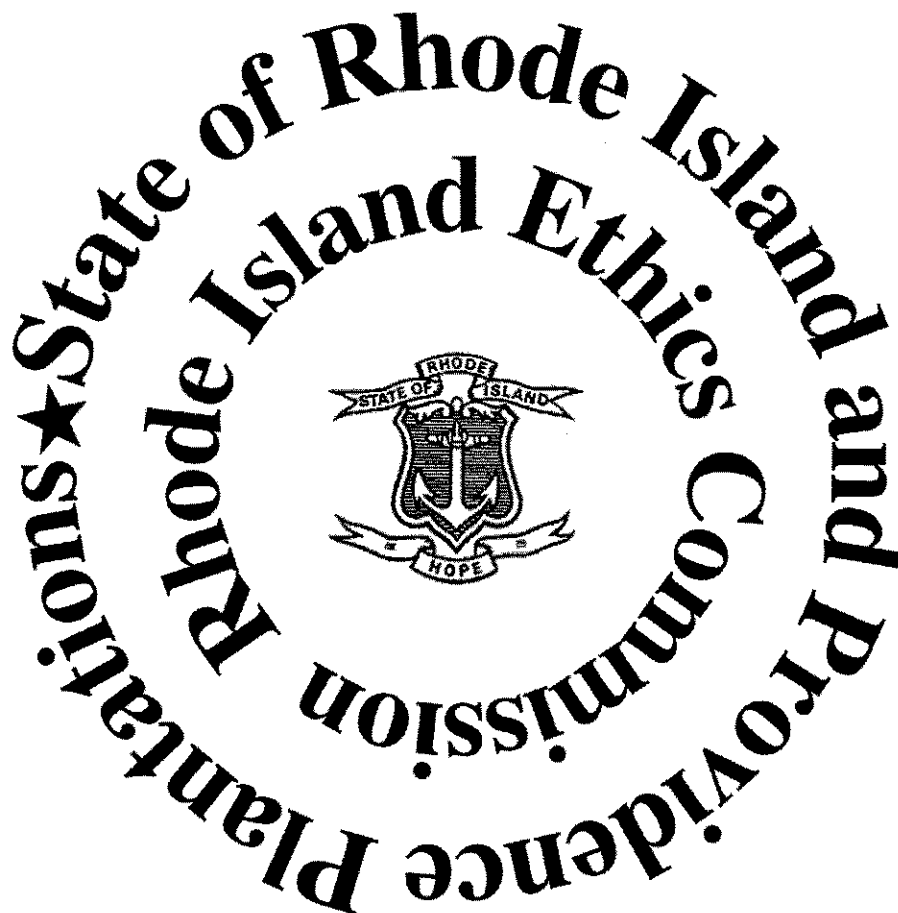


RHODE ISLAND ETHICS COMMISSION



FY2010
ANNUAL REPORT

ANNUAL REPORT FISCAL YEAR 2010

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I. INTRODUCTION TO THE COMMISSION

A. INTRODUCTION

The Rhode Island Ethics Commission (“Commission”) is a constitutionally mandated body authorized to adopt, administer, and enforce the State of Rhode Island’s Code of Ethics in Government (“Code” or “Code of Ethics”). See R.I. Const. art. III, § 8. The Code of Ethics is embodied in Rhode Island General Laws §§ 36-14-4 to 36-14-7 and Commission Regulations 36-14-5001 to 36-14-7004, and sets forth standards of conduct for all of Rhode Island’s public officials and employees.

The Commission educates and advises public officials and employees about the standards of conduct set forth in the Code of Ethics. The education program offers seminars and workshops, and disseminates publications about the Code of Ethics, its statutory and regulatory guidelines, and the procedures of the Commission. Advisory opinions respond to specific questions about the Code posed by public officials and employees facing potential conflicts of interest.

The Commission enforces the Code of Ethics through a combination of executive session investigative proceedings, open hearings, and public adjudications. Enforcement powers include civil penalties and, in some instances, the power to remove an official from office.

All of the Commission’s educational publications, advisory opinions, complaints, and final determinations are available to the public as public records. Investigative reports, related pleadings, and Commission orders become public at specific junctures in the enforcement process.

This Annual Report summarizes the activities of the Commission for State Fiscal Year (“FY”) 2010. Accordingly, this FY2010 Annual Report applies to the time period covering July 1, 2009 to June 30, 2010. Separate sections of this Annual Report describe FY2010 activities relating to regulatory and policy changes, declaratory rulings, advisory opinions, investigations and enforcement proceedings, litigation, financial disclosure, education, and public access.

B. HISTORY

In 1976, the Rhode Island General Assembly enacted the State's first Code of Ethics and created the Conflict of Interest Commission. That Code governed the activities of state and municipal elected and appointed officials and required all such officials to meet newly imposed financial disclosure requirements. The Conflict of Interest Commission enforced the statute.

In November of 1986, Rhode Island voters adopted a constitutional amendment mandating that the General Assembly "establish an independent non-partisan ethics commission" R.I. Const. art. III, § 8. In 1987, the General Assembly replaced the Conflict of Interest Commission with a fifteen member Ethics Commission. In 1992, the General Assembly reduced the size of the Ethics Commission to its current nine members.

The Rhode Island Constitution empowers the Ethics Commission to adopt and enforce a Code of Ethics, to investigate violations of the Code, and to impose penalties, including removal from office. R.I. Const. art. III, § 8. Legislation enacted by the General Assembly grants the Ethics Commission the power to issue advisory opinions to public officials and employees and to offer educational programs. See R.I. Gen. Laws §§ 36-14-10 and 11. The process by which Commissioners are appointed, quorum requirements, and the administrative powers of the Commission are governed by R.I. Gen. Laws §§ 36-14-8 and 9.

C. POWERS

The fundamental powers of the Ethics Commission are to:

- Adopt a Code of Ethics
- Advise public officials and employees about the Code of Ethics through the issuance of advisory opinions, as requested
- Enforce the Code of Ethics
- Enforce financial disclosure and maintain financial disclosure records
- Educate public officials, government employees, and citizens

D. RHODE ISLAND CODE OF ETHICS IN GOVERNMENT

The Rhode Island Constitution requires that public officials and employees "adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage." R.I. Const.

art. III, § 7. The Constitution also provides that all Rhode Island public officials and employees are subject to the Code of Ethics. R.I. Const. art. III, § 8. This includes elected and appointed officials and employees at the state and local levels of government. Id.

The Code of Ethics prohibits conflicts of interest. R.I. Gen. Laws § 36-14-5(a). Public officials and employees may not have financial interests that are in substantial conflict with the proper discharge of their public duties. Id. Conflicts of interest include the financial interests of the public official or employee as well as those of his or her family, private employers, business associates, or any business the official or employee may represent. R.I. Gen. Laws § 36-14-7(a). When conflicts of interest arise, public officials and employees are required to disclose the nature of the conflict. R.I. Gen. Laws § 36-14-6. They are further required to recuse themselves from taking any official government action or participating in deliberations concerning a matter in which they have a conflict of interest. See R.I. Gen. Laws §§ 36-14-5 and 6 and Regulations 36-14-5002 to 36-14-5018.

The Code of Ethics includes statutory provisions enacted by the General Assembly and adopted by the Commission. See R.I. Gen. Laws §§ 36-14-4 to 36-14-7. In addition, the Code of Ethics consists of regulatory provisions enacted solely by the Ethics Commission. See Commission Regulations 36-14-5001 to 36-14-7004. There are also statutes and Commission regulations that set forth the Commission's procedures. See R.I. Gen. Laws §§ 36-14-12 to 36-14-14, and Commission Regulations 36-14-1000 to 36-14-1029, and 36-14-12001 to 36-14-12002. Copies of the full Code are available from the Commission office or may be downloaded from the Commission's web site at <http://www.ethics.ri.gov>.

Furthermore, the Ethics Commission has regulatory authority relating to certain financial disclosure requirements for gambling interests, pursuant to R.I. Gen. Laws §§ 41-9-1 to 41-9-6, and has enforcement authority relating to goods or services provided to public officials and employees by state vendors, pursuant to R.I. Gen. Laws §§ 36-14.1-1 to 36-14.1-4. The Ethics Commission also works with the Board of Governors for Higher Education in the review of applications for exceptions to the Code made by state university inventors and researchers. See R.I. Gen. Laws § 16-59-26.

E. THE COMMISSION

The Commission is comprised of nine Rhode Island citizens. Four are appointed directly by the Governor; the other five are appointed by the Governor from lists of nominees submitted by the Majority and Minority Leaders and the Speaker of the Rhode Island House of Representatives, and the President and the Minority Leader of the Rhode Island Senate, respectively. R.I. Gen. Laws § 36-14-8(a). No Commission member may serve more than one full five-year term, provided, however, that a member may continue to serve until a successor is appointed. R.I. Gen. Laws § 36-14-8(c). While serving on the Commission, members are prohibited from holding or campaigning for public office, holding office in any political party or political committee, and participating in or contributing to any political campaign. R.I. Gen. Laws § 36-14-8(f). Additionally, Commissioners may neither directly nor indirectly attempt to influence any decision by a governmental body. Id.

Section 36-14-8(i) of the Rhode Island General Laws provides that Commission members shall receive one hundred dollars (\$100) per day as compensation for attendance at meetings of the Commission. For FY2010, however, the Commissioners received no compensation for their service because the General Assembly each year passes a Public Law suspending all such payments. During FY2010, the Commission conducted twenty-one (21) meetings.

The members of the Ethics Commission during FY2010 were: Barbara R. Binder, Chairperson; Ross Cheit, Vice Chairperson; J. William W. Harsch, Secretary; Frederick K. Butler; Mark B. Heffner; John D. Lynch, Jr.; James V. Murray; Deborah M. Cerullo SSND; and Edward A. Magro.

F. COMMISSION MEMBERS

Barbara R. Binder was appointed by the Governor as a direct appointment in 2004. The Commission elected her Vice Chairperson on October 11, 2005, and Chairperson on June 17, 2008. She was Chief of Staff for then-General Treasurer Nancy Mayer from 1993 to 1999. She was the Deputy Chief Counsel for the Department of Business Regulation from 1986 to 1992. Prior to that, she was an attorney with the law firms of Winograd, Shine and Zacks, and Selya and Iannuccillo. She holds a J.D. from Boston University Law School, an M.S. from Columbia University, and a B.A. from Brandeis University. Ms. Binder is a member of the Board of Governors of Miriam Hospital and a member of the Brandeis University Arts Council.

Frederick K. Butler was nominated by the House Minority Leader and appointed by the Governor in 2004. He was Vice President of Business Ethics and Corporate Secretary of Textron, Inc. He joined Textron in 1980 as a staff attorney and served in various legal and executive positions before being named Vice President and Corporate Secretary in 1999, serving in that position until he retired in December 2009. Prior to joining Textron, he was an associate at the New York law firm of Dewey, Ballantine, Bushby, Palmer, and Wood. Mr. Butler received his B.A. from Harvard University and his J.D. from Harvard Law School. He also participates in various civic and charitable organizations, including the Rhode Island Foundation, the Providence Foundation, First Works Providence, and Salve Regina University.

Deborah M. Cerullo SSND was appointed directly by Governor Donald L. Carcieri in 2008. Commissioner Cerullo graduated from the University of Rhode Island in 1976 and the Boston University School of Law in 1980. She served as an Assistant D.A. in Massachusetts until 1985, when she entered the School Sisters of Notre Dame. She also served as an investigator in the consumer fraud unit and as an Assistant D.A. in New York before returning to Boston, where she served as a staff attorney with both secular and faith-based poverty law firms. She has received a Master's degree in Canon Law from the University of St. Thomas Aquinas in Rome and has taught at the law schools at the University of Notre Dame and Boston College. Commissioner Cerullo currently has a private law practice that focuses primarily on religious organizations and their members.

Ross Cheit was nominated by the Senate Minority Leader and appointed by the Governor in 2004. The Commission elected him Secretary on February 12, 2008 and Vice Chairperson on June 17, 2008. He graduated from Williams College in 1977 and subsequently received a law degree from the University of California, Berkeley. After clerking for a judge on the Oregon Supreme Court, he returned to the University of California, Berkeley for a doctorate in Public Policy. He has been affiliated with Brown University since 1986 and currently is an Associate Professor of Political Science and Public Policy. Professor Cheit was a Fellow in the Ethics and Professions Program at Harvard University in 1990-1991. He was later a Faculty Fellow in the Ethics and Public Administration Program at the University of Rhode Island.

J. William W. Harsch was appointed directly by the Governor in 2008. Mr. Harsch was elected by the Commission to serve as Secretary in June, 2008. Mr. Harsch graduated from Williams College in 1960 and from Harvard Law School in 1964. Mr. Harsch has served in a number of state and federal governmental positions, including: Special Assistant to Governor Philip Noel; Director of the

Rhode Island Department of Environmental Management; Chairman of the Rhode Island Public Utilities Commission; Legislative Assistant to U.S. Senator Stephen M. Young (D-Ohio); Administrative Assistant to U.S. Congressman Frank E. Evans (D-Colorado); and Deputy Associate Director for Environment, Energy, Natural Resources, Science and Technology in the Executive Office of the President. Mr. Harsch has been an attorney in private practice in Rhode Island since 1980 and has served as solicitor for the Towns of Tiverton and Jamestown.

Mark B. Heffner was nominated by the President of the Senate and appointed by the Governor in 2009. Mr. Heffner is an attorney in private practice and specializes in the area of elder law. A member of the national Academy of Elder Law Attorneys since 1990, Mr. Heffner has presented at national and regional conferences on elder law topics. Mr. Heffner served in the Rhode Island House of Representatives for five terms from 1990 to 2000. He graduated from Harvard College and Boston College Law School.

John D. Lynch Jr. was nominated by the Speaker of the House and appointed by the Governor in 2009. Mr. Lynch is an attorney with the law firm of Lynch, Lynch & Friel, where he has achieved extensive experience in civil and criminal practice before the Rhode Island Family, District, Superior and Supreme Courts, as well as the United States District Court for the District of Rhode Island. Mr. Lynch was a member of the Rhode Island Trial Lawyers Association and the American Trial Lawyers Association, and is a member of the Kent County Bar Association, where he currently serves as a member of the Executive Committee. Mr. Lynch is a graduate of Boston College and received his J.D. from Nova Southeastern University School of Law.

Edward A. Magro was appointed directly by the Governor in 2008. Mr. Magro graduated from Trinity College in 1982 and received his J.D. from New York Law School in 1986, as well as a Master's degree in Public Administration from Roger Williams University in 2009. Mr. Magro worked as an attorney for a number of private law firms in New York City, including as a litigation attorney and partner at Wilson, Elser, Moskowitz, Edelman and Dicker. Mr. Magro went on to serve as President and Founder of Collections Unlimited, Inc., an East Greenwich based accounts-receivables company. He has worked at Bryant University since 2008, currently serving as the Associate Director of Planned Giving.

James V. Murray was nominated by the House Majority Leader and appointed by the Governor in 1998. A resident of Warwick, Mr. Murray has served as Managing Attorney for Amica Mutual Insurance Company since 1993. Prior to joining Amica, he served as Managing Attorney to Cigna Corporation and Aetna Life & Casualty and as senior trial attorney for Travelers Insurance Company. He holds a B.A. in Government, *cum laude*, from Harvard University, and a J.D. from Suffolk Law School.

G. COMMISSION STAFF

The staff of the Ethics Commission is responsible for the daily operations of the agency. The Executive Director/Chief Prosecutor is the chief administrative officer, directs all investigative and enforcement activities, prosecutes complaints before the Commission, litigates matters before the Superior and Supreme Courts of Rhode Island, and coordinates policy decisions of the Commission. The Education Coordinator designs, develops, and directs all educational programs, including seminars and publications, acts as a liaison to the public and the media, and coordinates the Commission's advisory opinion and public access programs. The Staff Attorneys oversee investigative matters, conduct prosecutions, represent the Commission in court litigation, and draft legal recommendations for the Commission regarding advisory opinions, legislation, and policy matters. The Investigators investigate complaints filed by private parties and by the Commission, oversee preliminary investigations, and process and review non-complaint information received by and/or referred to the Commission. The Office Manager and administrative staff maintain all financial disclosure and complaint records and provide administrative support to all Commission programs and activities. Considerable staff time is devoted to creating and maintaining accessible records for public inspection. The staff responds to hundreds of requests for information and for access to Commission records.

In FY2010, the Commission staff was as follows:

Executive Director/Chief Prosecutor	Kent A. Willever, Esq.
Senior Staff Attorney	Katherine D'Arezzo, Esq.
Education Coordinator/Staff Attorney	Jason Gramitt, Esq.
Staff Attorney	Dianne L. Leyden, Esq.
Staff Attorney	Esme DeVault, Esq.
Chief of Investigations	Steven T. Cross
Deputy Chief Investigator	Peter J. Mancini
Investigator	Gary V. Petrarca
Office Manager	Patricia F. Barker
Administrative Officer	Michelle R. Berg
Administrative Assistant	Tracy Teixeira
Research Aide	Suzy Melo

H. LEGAL COUNSEL

The services of the Commission's Legal Counsel are retained independent of the Executive Director or other Commission employees. The Legal Counsel responds to questions of law posed by Commission members and advises the Commission regarding Advisory Opinions and all other legal matters. The Commission's Legal Counsel in FY2010 was William J. Conley, Jr., and subsequently Edmund L. Alves, Jr. beginning March 30, 2010.

I. BUDGET

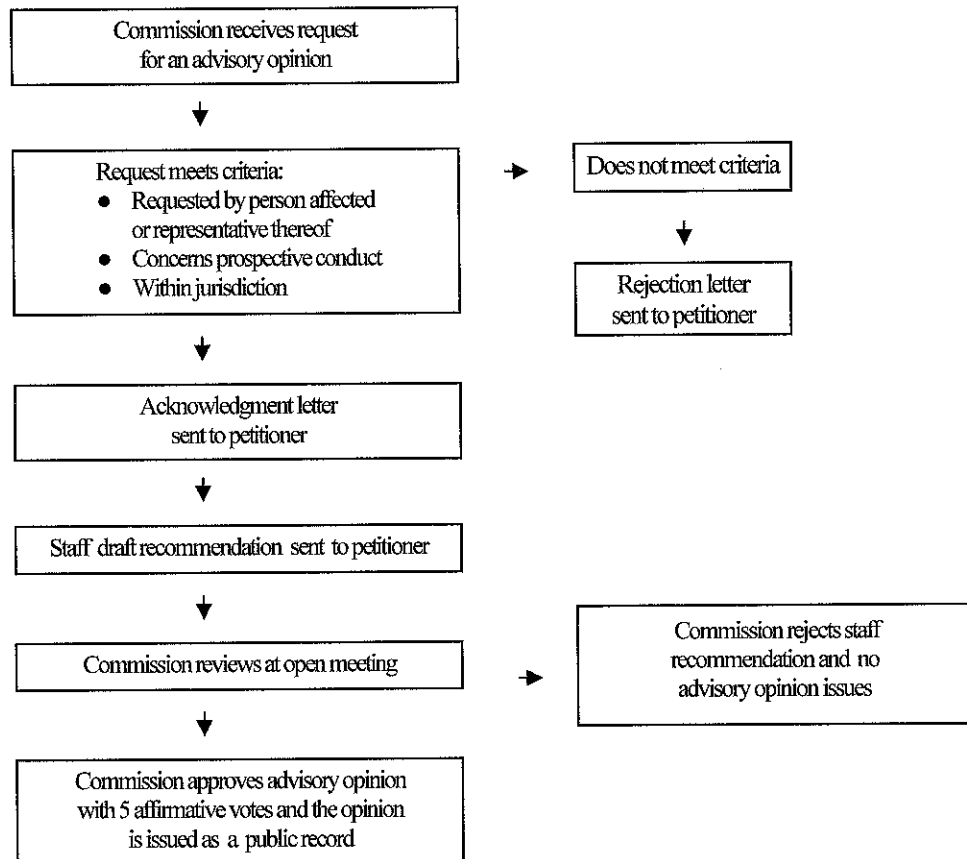
The Commission's expenditures for FY2010 totaled \$1,366,012. This reflects an increase of \$16,302 from FY2009.

II. ADVISORY OPINIONS

A. INTRODUCTION

Rhode Island General Laws § 36-14-11 authorizes the Ethics Commission to issue advisory opinions to public officials and employees, both at the state and municipal levels. Any public official or employee may request or petition that the Commission interpret the Code of Ethics and recommend specific actions in keeping with the requirements of the Code. Advisory opinions require an affirmative vote of five of the nine members of the Commission. Requests for advisory opinions must be in writing and include the petitioner's position, the jurisdiction and powers of the department, agency, or public body he or she serves, and the nature of the potential conflict or other inquiry. Opinions are issued in open session and are public records.

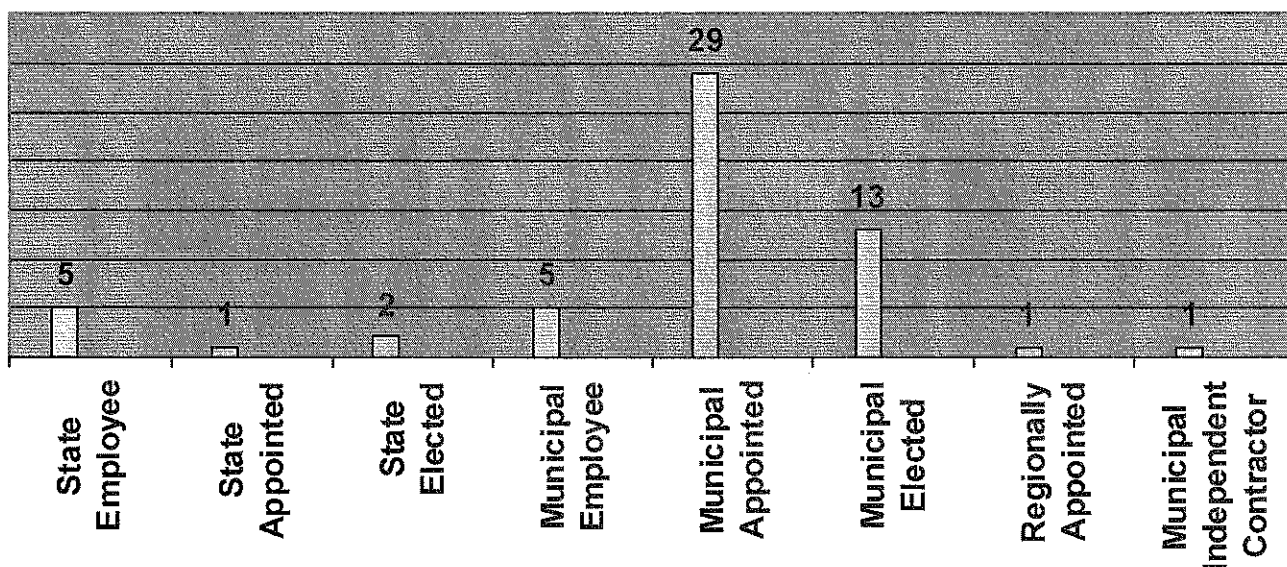
Advisory Opinion Process Flowchart



B. ADVISORY OPINIONS ISSUED IN FY2010

Fifty-seven (57) advisory opinions were issued in FY2010. Of the advisory opinions issued five (5) came from state employees, one (1) from a state appointed official, two (2) from state elected officials, five (5) from municipal employees, twenty-nine (29) from municipal appointed officials, thirteen (13) from municipal elected officials, one (1) official from a regional position, and one (1) municipal independent contractor. The chart below shows the distribution of advisory opinions issued in FY2010 for the aforementioned eight (8) groups.

Distribution of Advisory Opinions Issued by Position



Individual advisory opinion requests often raise multiple issues. The subjects of the advisory opinions requested and issued in FY2010 included the following: nepotism, potential conflicts arising when an official or employee also has private employment, potential conflicts arising when a family member is also employed in the public sector, serving in dual public roles, business associates, budgets, the post-employment revolving door provision, whether the hardship exception applies allowing a public official to participate in a matter which would otherwise constitute a conflict of interest, recusal, and political activity.

C. ADVISORY OPINION KEYWORD INDEX

The following is a list of keyword topics addressed by advisory opinions issued in FY2010. Because requests often raise multiple issues, the number of topics addressed in advisory opinions exceeds the total number of advisory opinions.

A-B

Appointing Authority (3)
Budget (2)
Business Associates (10)

C

Class Exception (2)
Code Jurisdiction (1)
Competitors (1)
Confidential Information (1)
Contract (2)

D-H

Dual Public Roles (1)
Family (4)
Family: Business Interest (2)
Family: Public Employment (4)
Family: Supervision (3)
Financial Interest (4)
Gifts (2)
Hardship Exception (7)

I-O

Lobbying (1)
Memberships (2)
Ministerial (1)
Nepotism (11)
Non-Profit Boards (1)

P-Q

Post Employment (1)
Private Employment (8)
Probate (4)
Property Interest (2)
Prospective Employment (1)

R-Z

Recusal (3)
Revolving Door (6)

D. TELEPHONE AND WALK-IN INQUIRIES

In FY2010, the Commission continued its efforts in responding to telephone inquiries from government officials, public employees, and from the public at large. Through rotating staff assignments, questions about the Code or Commission procedures are answered without delay. While not offering legal advice, the staff provides information, copies of past advisory opinions, and educational publications in response to numerous calls during the fiscal year. Many of the calls came from private citizens and the media, with the remainder of calls coming from public officials and employees. While many of the calls were questions about advisory opinions or complaints, other matters included questions about financial disclosure, recusal, whether a particular matter fell within the Commission's jurisdiction, gifts, dual public roles, revolving door, recusal, private employment, nepotism, and other requests for information.

E. PUBLIC ACCESS

All individual advisory opinions are public records and are issued by the Commission in open session. The full text of Commission advisory opinions are available at the Commission's offices and, for advisories issued from 1995 to the present, on the Commission's web site. The Commission's web address is:
<http://www.ethics.ri.gov>.

III. COMPUTERS AND TECHNOLOGY

A. INTRODUCTION

The Ethics Commission's responsibilities include ethics regulation, programs in financial disclosure, investigation and enforcement, and ethics education. Given the breadth and overlap of these responsibilities and associated information, the Commission has implemented a technologically integrated approach to handling data so as to improve productivity and efficiency, as well as the public's access to information.

B. PUBLIC ACCESS

The Commission maintains a web site that is available to the public. Among other things, the web site provides access to: the full-text of all individual advisory opinions from 1995 to present; Decisions & Orders following adjudications and Settlements & Orders issued by the Commission regarding complaint matters from 1998 to the present; the entire Code of Ethics in Government; Commission meeting schedules, agendas, and minutes; updated educational materials; PDF copies of all legislator and general officer financial disclosure statements for the most recent filing year; downloadable forms; an RSS feed with continuously updated media happenings and news briefs after each Commission meeting. The Commission's web address is <http://www.ethics.ri.gov>.

IV. DECLARATORY RULINGS

A. INTRODUCTION

The Ethics Commission, under Commission Regulation 36-14-1025, accepts petitions from any interested person seeking a “declaratory ruling” clarifying the applicability of the Code of Ethics. Such rulings have the same status as Commission orders in contested cases and may be challenged in Superior Court.

All declaratory rulings are public records. Declaratory rulings are issued in open session following public hearing. Notices of all hearings and open meetings are posted and the public may attend.

B. DECLARATORY RULINGS REQUESTED IN FY2010

The Commission received no requests for declaratory rulings in FY2010.

V. EDUCATION

A. INTRODUCTION

The statutory provisions of the Rhode Island Code of Ethics authorize the Ethics Commission to establish an education program. See R.I. Gen. Laws § 36-14-9(a)(14) and § 36-14-10. The program's purpose is to educate public officials, public employees, and all Rhode Islanders regarding the Code of Ethics and Commission procedures. The program includes seminars and workshops, as well as the production and dissemination of handouts and other publications explaining the Code of Ethics.

The Commission employs an Education Coordinator to conduct outreach and training for public officials and employees at all levels of government, crafting objectives and content for presentations that best meet the needs of a specific agency or department. Seminars and workshops incorporate issues that arise under the Code of Ethics in the advisory opinion and complaint contexts. The educational sessions are provided in an interactive presentation format and vary in duration, depending on the needs and goals of the agency or department. Commission publications are provided during these presentations and are also available at the Commission offices.

The seminar program is designed to be easily tailored to the unique governmental roles and responsibilities of its participants. Each class is built around a core curriculum. In addition, the governing statutes, policies, and procedures of the sponsoring agency and the job descriptions, powers, and duties of the participants are taken into account so as to focus the discussion on the most relevant sections of the Code of Ethics. The Education Coordinator attempts to enrich the program with real-world examples of Code applications. Whenever possible, seminars are provided at the worksites or meeting places of the participants. Most programs are provided at no cost to the sponsoring agency, although occasionally agencies are asked to assist the Ethics Commission with the costs of duplicating handouts used in the program.

B. EDUCATIONAL WORKSHOPS PROVIDED IN FY2010

In FY2010, the staff provided forty-one (41) workshops, seminars, and presentations to nearly two thousand (2,000) people across the State. Among the municipalities receiving ethics training during FY2010 were the Towns of

Westerly, Portsmouth, and New Shoreham, and the Cities of Cranston and Providence. Additionally, at the state level training was provided to the Rhode Island House of Representatives, the Office of the Lieutenant Governor, and to various departments of state government including the Department of Education, the Quonset Development Corporation, the Workforce Partnership of Greater Rhode Island, the Division of Purchasing, the Division of Taxation, the State Police, and to all of the state attorneys in the Executive Branch.

For the eighth consecutive year, the Commission's Education Coordinator spoke at the Attorney General's Open Meeting Summit at Roger Williams University School of Law. The Education Program also reached out to professional organizations having large numbers of members who are public officials across Rhode Island, including the Ocean State Institute of Internal Auditors, the Rhode Island Association of Assessing Officials, and the Rhode Island Government Finance Officers' Association.

Other workshops were given to the National Conference of International Visitors from Indonesia, the Municipal Police Training Academy, the Chariho School Committee, and the Cranston Department of Senior Services.

In addition to the above educational outreach, the Commission staff utilizes a "duty call" system to provide information and answers to persons subject to the Code of Ethics and to members of the public. Each business day, a Commission staff attorney or investigator is assigned as duty person to answer questions from the public that come through our telephones, via email or from walk-in visitors to our offices.

C. EDUCATIONAL PUBLICATIONS

As part of its educational mission, in FY2010 the Commission made several informative publications available to the public. These publications assist the public, as well as those subject to the Code of Ethics, in their efforts to understand and abide by the Code's provisions. Subjects covered in these publications include information on the content of the Code of Ethics itself and the application of the Code to specific groups of public officials and employees, financial disclosure requirements, and the complaint, investigation, and enforcement process.

VI. FINANCIAL DISCLOSURE

A. INTRODUCTION

The Ethics Commission is empowered by the Rhode Island Constitution to adopt provisions of the Code of Ethics governing financial disclosure by public officials. The purpose of requiring financial disclosure is to help ensure that those people who are acting in the public interest do not use their public positions to further their private financial interests. The financial disclosure statement also provides evidence that there are no conflicts between the official's financial interests and his or her public duties.

By statute, financial disclosure to the Ethics Commission is required of: (1) all state and municipal elected officials; (2) candidates for state or municipal elective office; (3) most state and municipal appointed officials; and (4) some state employees who serve in major decision-making positions.

Financial disclosure statements are filed annually. Officials are required to disclose major assets and sources of occupational income, including those of a spouse and any dependent children. Officials must also disclose whether they, a spouse, or a dependent child, hold an interest in any business regulated by the Rhode Island government or in any enterprise which engages in business transactions with the government. Additionally, officials must disclose the name and address of any person, business, or organization which is owed more than one thousand dollars (\$1,000) by the official, a spouse, or a dependent child.

Most officials are not required to disclose the dollar amount or value of any income, asset, or debt. However, the five General Officers (Governor, Lieutenant Governor, Attorney General, Secretary of State, and Treasurer) and any candidates for a general office, must disclose both the source and amount of any income, occupational or otherwise, that is greater than two hundred dollars (\$200).

B. FINANCIAL DISCLOSURE PROCESS

This fiscal year (running from July 1, 2009 through June 30, 2010), the staff of the Ethics Commission processed the filing of the 2009 financial disclosure statement for more than thirty-six hundred (3,600) officials. Databases are used to create and maintain lists of officials subject to the disclosure requirements. Throughout the fiscal year and beyond, staff update the databases as people declare as candidates,

elections are held, appointments are made, terms end, officials resign, new positions are created, and former agencies and commissions are disbanded. Accordingly, the statistics relative to the 2009 financial disclosure filings continue to change even after the close of the fiscal year.

Public officials and employees who are required to file financial disclosure statements are identified by city and town clerks, fire districts, and the leaders of state departments and agencies. Lists containing the names of such filers are transmitted to the Ethics Commission staff. Thereafter, financial disclosure forms and instructions are mailed to required filers in March of each year, and also to newly installed officials and employees throughout the year as soon as the Commission receives official written notice of their election, appointment or hiring.

Financial disclosure statements for each calendar year must be filed by incumbent filers no later than the last Friday in April of the following year. For example, the 2009 financial disclosure statement was due to be filed by the last Friday of April, 2010. Some filers request and are granted a sixty (60) day extension for filing, extending the due date until late June.

The Commission staff dedicates significant attention and resources to encouraging compliance with the financial disclosure requirement. The Commission's Executive Director has developed and implemented a series of procedures dubbed "Operation Compliance," aimed at improving the rates of public official compliance with financial disclosure. Pursuant to Operation Compliance, which extends beyond the end of each fiscal year, public officials who have not filed by the April deadline, or by the June extension if applicable, are mailed a reminder letter that contains a clear warning that non-filing may result in a formal complaint and the imposition of a civil penalty of up to \$25,000. This letter generally provides a short amnesty period during which no complaint will be initiated by the staff if the filing is made.

Another Operation Compliance procedure involves the Commission staff personally contacting Rhode Island city and town solicitors, clerks and state officials, and providing them with lists of non-filers. The Commission staff requests that these non-filers be contacted by their own staffs and encouraged to comply with the filing requirement, thus further reducing the need to initiate prosecutions and the imposition of monetary penalties.

The final phase of Operation Compliance involves the initiation of the complaint process. Officials who still have not complied at this point are subject to having complaints filed against them. Each year, the Commission staff initiates non-filing complaints against all elected officials who have failed to file, and depending upon Commission resources, against several appointed officials. Care is taken to ensure fairness in this complaint process so that, for instance, complaints are always filed against all non-filers in the same category (e.g. Town Council or School Committee members) throughout the state, rather than only against those members in selected communities.

These procedures and policies, including Operation Compliance, are repeated in each successive filing cycle. It is the goal of the commission to improve financial disclosure compliance each year until a rate of 100% compliance is achieved.

C. COMPLIANCE IN FILING THE 2009 FINANCIAL DISCLOSURE STATEMENT

The 2009 financial disclosure statements for incumbent officials and employees, covering calendar year 2009, were required to be filed by April 30, 2010, which is within Fiscal Year 2010. By April 30, 2010, 67% of the 3,667 required filers had complied.

Thereafter, the Commission staff initiated the Operation Compliance procedures which include the mailing of reminder letters, making contact with clerks, solicitors, and others to request assistance in locating non-filers, and finally the initiation of complaints and imposition of civil penalties. The Commission initiated twelve (12) complaints relative to failures to timely file the 2009 statement, all resulting in findings of violation and the total collection of \$5,450 in civil penalties. This process to improve compliance on the 2009 filings, including the complaint filings, extended beyond the close of the 2010 fiscal year on June 30, 2010.

As of the close of the FY2010 on June 30, 2010, the compliance rate was approximately 87%, up from the April 30, 2010 compliance rate of 67%. Operation Compliance continued beyond the close of FY2010, and resulted in an ultimate compliance rate of 94% for the 2009 financial statement.

D. PUBLIC ACCESS

All financial disclosure statements are public records and may be reviewed during regular business hours. The Commission maintains records at its offices for up to five (5) years. Records dating back beyond five (5) years are held at an off-site storage facility. Copies of any financial disclosure record may be obtained at a cost of \$0.15 per page.

VII. INVESTIGATIONS AND ENFORCEMENT

A. INTRODUCTION – THE COMPLAINT PROCESS

The Ethics Commission is constitutionally and statutorily empowered to enforce the Code of Ethics. See R.I. Const. art. III, § 8; R.I. Gen. Laws §§ 36-14-12 to 36-14-14. The Commission's enforcement powers include the authority to accept or initiate complaints alleging Code violations, investigate and adjudicate those complaints, and impose civil penalties.

Filing a Complaint

Prior to filing a complaint, potential Complainants are encouraged to contact the Commission at any time by telephone at 222-3790 to speak with a member of the Investigative Staff during Commission office hours, 8:30 a.m. - 4:30 p.m., Monday through Friday. Those contemplating filing a complaint may also arrange to come in during office hours and discuss with Investigative Staff the procedure, the substance of the potential complaint, or any other questions they might have before actually filing a complaint. While those considering filing a complaint are encouraged to contact Commission Staff first, it is not mandatory to do so prior to the actual filing of a complaint. Complaints must be filed on a proper complaint form, allege conduct that is prohibited by the Code of Ethics, and be signed and notarized.

Within three (3) working days of the receipt of any properly filed complaint, the Executive Director will either accept it for filing or reject it based on jurisdictional, statutory or regulatory defects. When a complaint is accepted for filing, the Commission mails copies of the complaint, the Code of Ethics, and Commission Regulations to the Complainant and the Respondent. The Commission thereafter sends timely notices of subsequent Commission actions to the Complainant and Respondent.

Initial Determination

At this first stage of review, the Commission determines whether the complaint properly alleges facts sufficient to constitute a violation of the law. Meeting in closed executive session, the Commission either decides to dismiss the complaint or to initiate an investigation. The decision to investigate does not address the

validity of the complaint; rather, it merely indicates that the allegations properly fall under the provisions of the Code of Ethics. Neither the Complainant nor the Respondent participates in the initial determination.

Informal Resolution and Settlement

At any time subsequent to an Initial Determination of the complaint, the Prosecution and the Respondent may seek an informal disposition through an agreed upon settlement, consent order, or other informal resolution of the pending complaint. This may entail the parties meeting for an informal conference to seek such informal disposition. The informal conference shall not be used as evidence in any subsequent proceeding. Any informal disposition of a pending complaint shall be subject to the approval of the Commission. Once approved by the Commission, the Informal Resolution and Settlement Agreement and any Orders issuing regarding the complaint become public documents.

Investigation

The Commission may issue subpoenas to compel the production of evidence or the sworn testimony of witnesses. Staff Investigators may take oral or written evidence under oath or affirmation. An investigation must be completed within 180 days after the complaint is filed, unless the Commission approves an extension for good cause, with a maximum of two such 60-day extensions. Investigative Reports compiled by staff become public records after a probable cause hearing has been completed.

Probable Cause Hearing

The Respondent is mailed a copy of the Investigative Report at least 14 days prior to a scheduled hearing. At the hearing, the Prosecution presents the results of the investigation. The Commission reviews the Investigative Report of the Prosecution as well as any answer or other information submitted by the Respondent. The Commission may then vote to dismiss the complaint for lack of evidence, or find that probable cause exists to support the allegations, and/or amend the complaint if the investigation reveals probable cause exists to believe that other violations of the Code of Ethics have occurred.

Adjudicative Hearing

If the Commission finds that probable cause exists to support the allegations, an adjudicative hearing is scheduled, with at least 15 days prior notice to the Respondent. This is an adversarial hearing. The Prosecutor and the Respondent may present evidence and examine witnesses. Additionally, Commissioners may question witnesses. Rules of evidence are followed, regulations provide for discovery, and principles of due process govern all procedures. A stenographic record is kept and the hearing is conducted in an open and public session.

Final Disposition

The Commission meets in closed session to deliberate and determine whether there has been a knowing and willful violation of the Code of Ethics. Upon a finding of violation, the Commission may: (a) issue a cease and desist order; (b) require the Respondent to file any statement mandated by the Ethics Code; (c) impose a civil fine of up to \$25,000 per violation and the return of any unjust enrichment; and/or (d) for egregious violations, remove from office any official not subject to impeachment.

Whistleblower Protection

Complainants and witnesses have rights under the Rhode Island Whistleblower Act, R.I. Gen. Laws §§ 28-50-1 to 28-50-9 and may also bring a civil action in Superior Court within three years after being threatened or intimidated in any proceeding before the Ethics Commission.

Frivolous Complaints

The Code of Ethics provides that “no person shall knowingly and willfully make a false or frivolous complaint under this chapter.” R.I. Gen. Laws § 36-14-5(k).

Judicial Review

All Final Orders of the Commission are subject to review by the Rhode Island Superior and Supreme Courts pursuant to the Administrative Procedures Act. For more information see: R.I. Gen. Laws § 36-14-12 to § 36-14-15 and R.I. Ethics Commission Regulations 1000 to 1023 or call the Commission at 401-222-3790.

B. PRELIMINARY INVESTIGATIONS

Preliminary investigations are undertaken when the Commission receives information, other than through a formal complaint by a third party, which indicates a possible Code violation. Pursuant to Regulation 36-14-12001, the Commission's Executive Director is required to notify the Commission whenever such an investigation is initiated; all materials relating to the investigation shall remain confidential, except that access may be granted to any federal, state, or municipal law enforcement agency, or disclosed in a complaint, or after a finding of probable cause in accordance with R.I. Gen. Laws § 36-14-12(c)(4). Following the Preliminary Investigation, the Executive Director may choose to file a formal complaint and begin an enforcement action.

The Executive Director initiated two Preliminary Investigations in FY2010, PI Nos. 2009-1 and 2009-2. Preliminary Investigation No. 2009-1 resulted in the filing of a complaint and an informal resolution and settlement for a fine of one thousand (\$1,000) dollars. However, no complaint issued as a result of the investigation in PI No. 2009-2.

C. COMPLAINTS, ENFORCEMENT ACTIONS AND PENDING COMPLAINTS

The Commission prosecutes two types of complaints: conflict of interest complaints for alleged substantive violations of the provisions of the Code of Ethics and non-filing complaints for the failure to timely file financial disclosure statements.

As FY2010 began, there were no outstanding conflict of interest complaints pending before the Ethics Commission. However, during FY2010, eleven (11) conflict of interest complaints were filed. The Commission issued final orders in four (4) cases during FY2010. Of these cases, two (2) were settled with a finding of violation and imposition of a civil penalty (totaling \$2,000), one (1) was dismissed at initial determination, and one (1) was dismissed at probable cause. At the close of the fiscal year, seven (7) complaints were pending.

At the start of FY2010, there was one (1) outstanding non-filing complaint. During FY2010, ten (10) non-filing complaints were filed for the failure to timely file calendar year 2008 financial disclosure statements. The Commission issued final orders in eleven (11) cases, all of which were settled with a finding of violation, with a civil penalty imposed in all eleven (11) cases (totaling \$5,000).

D. PUBLIC ACCESS

All complaints are public records from the date of filing. Investigative reports are confidential until a complaint is dismissed or a finding of probable cause is issued. All pleadings and Commission orders relating to the investigative phase become public after the probable cause hearing. All pleadings and Commission orders filed after the probable cause hearing are immediately public. Initial determination reviews, informal resolution and settlement and probable cause hearings are held in executive session. Adjudicative hearings are open to the public.

VIII. LITIGATION

A. INTRODUCTION

All final orders of the Ethics Commission in contested cases may be appealed to the Rhode Island Superior Court. Parties may also petition the Rhode Island Supreme Court for review. The Commission may initiate District Court actions to collect unpaid fines and may initiate Superior Court actions where judicial intervention is necessary to enforce the orders of the Ethics Commission.

B. LITIGATION COMMENCED AND PENDING IN FY2010

During FY2008, the Respondent in Complaint No. 2007-6, Joseph S. Larisa, Jr., filed an administrative appeal in the Rhode Island Superior Court seeking judicial review of an Ethics Commission Decision & Order which found Larisa committed a knowing and willful violation of R.I. Gen. Laws § 36-14-5(e)(4). The Commission imposed a civil penalty of five hundred dollars (\$500) for said violation. This matter was still pending before the Superior Court at the close of FY2010.

IX. PUBLIC ACCESS

A. INTRODUCTION

The Rhode Island Ethics Commission is a public agency, subject to the requirements of the Open Meetings Act, R.I. Gen. Laws §§ 42-46-1 to 42-46-14, the Access to Public Records Act, R.I. Gen. Laws §§ 38-2-1 to 38-2-15, the Administrative Procedures Act, R.I. Gen. Laws §§ 42-35-1 to 42-35-18, and the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 to 12213.

The offices of the Commission are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on state holidays. All persons are welcome to inspect public records during regular business hours. Copies may be obtained in person, or by calling the Commission at 222-3790 (voice/TT), or via Rhode Island Relay, a telecommunications service for persons with hearing or speech disabilities, at 1-800-RI5-5555. A fee of \$0.15 per page may be charged for copies.

B. OPEN MEETINGS

The Ethics Commission holds open meetings to consider advisory opinion requests, issue declaratory rulings, conduct adjudicative hearings, accept public comment on proposed regulations, and hear staff and committee reports. Initial determination reviews and probable cause hearings are conducted in executive session. Notices of all meetings are posted at the State House, Commission offices, and on the Commission's web site and with the Rhode Island Secretary of State. The public is welcome to attend all open meetings.

C. RECORDS

The minutes of open Commission meetings, advisory opinions, financial disclosure statements, and complaints are all public records. The public complaint files include, in addition to the actual complaint, any written answer filed by the Respondent, all orders issued by the Commission, notices of meetings and hearings, any motions filed, and a docket of Commission actions. Once a complaint is dismissed or a finding of probable cause is issued, the public files also contain the investigative report and related materials. Advisory opinions issued from 1995-on are available on the Ethics Commission web site, as are Decisions and Orders of complaint matters adjudicated or settled after 1998 and open session minutes.

D. FORMS

All forms of the Rhode Island Ethics Commission are available at the Commission's office. Additionally, recusal forms may be downloaded from the Commission's web site. Financial disclosure forms are provided for reference only, as an original form must be filed with the Commission.

E. EDUCATIONAL MATERIALS

All educational materials are available to the public. Materials include the Code of Ethics, summaries of advisory opinions, brochures explaining Commission procedures, and Annual Reports.

F. ACCESS FOR PERSONS WITH DISABILITIES

The Ethics Commission has a strong commitment to ensuring and improving access for persons with disabilities. Reasonable accommodations are made to afford public officials and the general public access to the Commission's meetings and documents. Any person requesting a reasonable accommodation because of a disability may contact the Commission's A.D.A. coordinator by calling the Commission during regular business hours or writing to its office address.

G. WEB SITE

The Commission's web site is located at <http://www.ethics.ri.gov>. It contains basic information about the Commission's history and powers, its members, the Code of Ethics, advisory opinions, education, investigations, and financial disclosure. It also includes the text of advisory opinions issued by the Commission from 1995 to the present and various other publications, including the full text of Commission Decisions and Orders and Settlements in complaint matters from 1998-present, sample forms, and educational help sheets. A search page allows users to search the entire web site, advisory opinions, decisions and orders, meeting minutes or the Code. Finally, the web site provides staff contact information.

H. RHODE ISLAND GOVERNMENT OWNER'S MANUAL

Information about the Ethics Commission is also listed in the Rhode Island Government Owner's Manual, which is published annually by the Rhode Island Office of the Secretary of State.

X. STATUTORY, REGULATORY, AND POLICY CHANGES

A. INTRODUCTION

The Rhode Island Constitution empowers the Commission to “adopt a code of ethics.” R.I. Const. art. III, § 8. Statutory provisions authorize the Commission to prescribe and publish, after notice and public hearings, rules and regulations to carry out the provisions of R.I. Gen. Laws §§ 36-14-1 to 36-14-21. The Commission’s authority to enact a code of ethics is concurrent with that of the General Assembly. Accordingly, changes in the Code may come from either body.

B. PUBLIC ACCESS

The Commission publishes the Code of Ethics and Procedural Regulations, and also makes them available on its web site. Revisions to the Code of Ethics and other regulatory matters are subject to the provisions of the Administrative Procedures Act, including the requirements for notice and public hearings. See R.I. Gen. Laws §§ 42-35-1 to 42-35-18.

C. NEW CODE PROVISIONS IN FY2010

During FY2010, the Commission and its staff continued to review the Code of Ethics and the Commission’s procedures in an effort to identify areas that might be improved through amendment, repeal, or further regulation.

1. Amendments:

This fiscal year the Commission did not amend any previously adopted regulations within the Code of Ethics.

2. Adoption of New Regulations:

This fiscal year the Commission did not adopt any new regulations.

In addition, in FY2010 the Legislature did not adopt any additional public laws amending or revising the Code of Ethics.

D. GENERAL COMMISSION ADVISORY OPINIONS IN FY2010

During FY2010, the Commission completed the process of re-examining the General Commission Advisory (GCA) Opinions that it began in FY2009 by adopting three new GCAS: GCA 2009-1, Nepotism; GCA 2009-2, Public Officials' Salaries; and GCA 2009-4, Secondary Employment.

The new GCAs are intended to provide the public with a general overview of the Commission's interpretation of specific subject areas, with examples and a list of previously issued relevant advisory opinions. The new GCAs are available on the Commission's web site or by calling 222-3790.

For additional information, contact:

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Providence, Rhode Island 02903

(401) 222-3790
1-800-RI5-5555 (Rhode Island Relay)
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